IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 29 OF 2006

MRS. MABEL LINDA SANTAMARIA, MAPUSA, BARDEZ GOA. ....Petitioner

Versus

MR. ARCHIE PEREIRA, MAPUSA, BARDEZ GOA. ....Respondent

Mr. S. Vales, Advocate for the Petitioner.

Coram:- N. A. BRITTO, J.

Date:- 8th November, 2006

P.C.:-

Heard Mr. S. Vales, the learned Counsel on behalf of the petitioner/complainant. The said complainant has invoked extraordinary jurisdiction of this Court to assail the Order dated 30-8-2006 of the learned J.M.F.C., Mapusa, dismissing the application filed on behalf of the complainant under Section 216 of the Code of Criminal POrocedure, 1973 for alteration of the charge.

The complainant is the sister of the respondent/accused. The complainant had filed a complaint against him under Sections 323, 352, 504 and 506(ii) I.P.C. and the learned J.M.F.C. by Order dated 14-8-2003 was pleased to issue process against the accused under Sections 504 and 506(ii) I.P.C. and later on 6-5-2005 was pleased to frame and explain the substance of the said accusation to the accused. Subsequently before the trial began, on behalf of the accused the said application dated 17-7-2006 came to be filed for alteration of the charge and the learned Magistrate by the impugned Order has observed that in case the complainant was aggrieved by the Order issuing process against the accused dated 14-8-2003 then it was for the complainant to have challenged the same and that it was impermissible for her to review the material which was already considered by the learned J.M.F.C. and frame a charge for which

process was not issued.

On behalf of the applicant/complainant, Mr. Vales has placed reliance on the decisions reported in AIR 1954 SC 266 and 2000 CRI.L.J. 1073. I have perused the same. Considering the facts, the same are inapplicable to the case at hand. The learned J.M.F.C. having considered the material produced by the complainant was pleased not to issue process against the accused under Sections 323 and 352 I.P.C. and the said Order amounted to discharging the accused under the said Sections and the complainant having not assailed the said Order dated 14-8-2003 it was impermissible for the complainant to have got the said Order modified by way of another application styling the same as an application for alteration of the charge.

This is not a fit case to invoke extraordinary jurisdiction. Application is dismissed in limine.

N. A. BRITTO, J.

RD.